IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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I.T.R. No.17 of 1990
Date of Decision:17.01.2007

The Commissioner of Income-tax (Central), Amritsar
.....Petitioner

Vs.

M/s Sanitary Improvement and Tiles Mfg. Co., Amritsar
.....Respondent

CORAM:- HON'BLE MR. JUSTICE M.M.KUMAR
HON'BLE MR. JUSTICE RAJESH BINDAL

Present:- Mr. Yogesh Putney, Advocate for the revenue.

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Rajesh Bindal, J.

The following questions of law have been referred for opinion of this Court arising out of order passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar in I.T.A. No.726(ASR)/1977-78 dated 31.1.1981 in respect of assessment year 1972-73:-

"1. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in upholding the contention of the assessee that by virtue of the opinion of the High Court given in I.T. Ref. No.134 of 1979 there is a different kind of default for which the penalty had been imposed on the assessee by the Income-tax Authorities?

2. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in deleting the penalty of Rs.18,223/- which was imposed on the basis of the lesser period of default from 1.9.1972 to 28.2.1974 as held by the Income-tax Officer?"

The issue raised in the present reference is with regard to levy of penalty of Rs. 18,223/- imposed under Section 271(1)(a) of the Income Tax Act, 1961 (for short, `the Act'). On account of delay in filing of return, a levy of penalty was upheld by the First Appellate Authority, however, before the Tribunal, the penalty was sought to be justified on the reasons

and period different than for which it was originally levied. On appreciation of material on record, the Tribunal having taken a view on subjective satisfaction and merely because a different view is possible, this Court would not like to substitute its own opinion on the same especially keeping in view the fact that the assessment year involved is 1972-73 and the amount of penalty being Rs.18,223/-.

Accordingly, the questions referred are answered against the revenue and in favour of the assessee.

(RAJESH BINDAL)
JUDGE

January 17, 2007 **(M.M.KUMAR)**
renu **JUDGE**